



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201509065

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 02 2014

Uniform Issue List: 408.03-00

T:EP:RA:13

Legend:

Taxpayer:

IRA:

Advisor:

Firm:

Amount:

Dear

This is in response to your letter dated June 21, 2013, submitted by your authorized representative, as supplemented by letters dated February 12, 2014, and July 1, 2014, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer maintained IRA. Taxpayer asserts that he received a distribution of Amount M from IRA. Taxpayer asserts that his failure to rollover Amount M within the 60-day period prescribed by section 408(d)(3) of the Code was due to the incomplete financial advice he received and his father's ill health and subsequent death that prevented him from meeting with his tax advisor and receiving needed tax advice in a timely manner. Taxpayer further represents that Amount has not been used for any other purpose.

Taxpayer consulted during November 2012 with his IRA financial advisor, Advisor, to ask if he could borrow money from his IRA. Advisor told Taxpayer that he could withdraw Amount but did not explain that because IRA was paying equal annuity payments, that substantial additional taxes would be due on account of the withdrawal of Amount. Taxpayer, relying on this advice withdrew on December 4, 2012, Amount from IRA. Taxpayer learned on December 14, 2012, that he no longer needed the use of Amount. Accordingly, Taxpayer did not use Amount and retained it in his bank account.

Taxpayer has a well-established pattern of meeting with tax preparer and tax advisor, Firm, in preparing his taxes. Each year since 2008 Taxpayer meets with Firm in January to discuss all tax matters. In November 2012, Taxpayer wished to discuss the tax implications of a new investment, including his withdrawal of Amount from IRA. However, Firm instructed Taxpayer to wait until after his investment closing, which happened on December 14, 2012, when the numbers would be final and when they would meet to discuss all tax matters. Rather than meeting with Firm as anticipated in mid to late December, Taxpayer had to travel out of state to assist his elderly mother with medical and family legal decisions related to his father's medical emergency and follow-up care during December before the holidays.

On January 27, 2013, Taxpayer's father passed away and while Taxpayer remained out of state to attend his father's funeral and help his mother, the 60-day rollover period elapsed. On February 15, 2013, shortly after returning home, Taxpayer began consulting with Firm about his taxes, and learned that by acting on the incomplete advice from Advisor he incurred an unanticipated major additional tax and that the 60-day rollover period had expired. Taxpayer expressed his regret that he had taken a withdrawal, stated to Firm that had he known all the ramifications, he would never have taken a withdrawal of Amount from IRA, and wished to reverse the withdrawal of Amount.

Firm submitted this ruling request. Firm has submitted a letter explaining that it advised Taxpayer to wait until mid-December 2012 to discuss his 2012 tax return information. Firm has further submitted that had it been able to meet with Taxpayer in mid-December as anticipated, before Taxpayer's father fell ill, it would have likely discussed Taxpayer's option of rolling over Amount within 60 days of distribution.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount from IRA.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included

in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(C)(i) of the Code provides, in summary, that the rollover rules of section 408(d)(3) do not apply to inherited IRAs.

Section 408(d)(3)(C)(ii) of the Code provides that the term "inherited IRA" means an IRA obtained by an individual, other than the IRA owner's spouse, as a result of the death of the IRA owner.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only

distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer is consistent with his assertion that Taxpayer's failure to accomplish a timely rollover was due to the incomplete financial advice he received from Advisor and the fact that his father's illness and subsequent death prevented him from meeting with Firm in time to take action with respect to rolling over Amount.

Therefore, with respect to your ruling request, we conclude Taxpayer is eligible to roll over any portion of Amount no later than the 60th day from the issuance of this letter. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, any portion of Amount will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

This ruling is limited to a request for a waiver of the 60-day rollover period. No opinion is expressed as to whether the payment from IRA to Taxpayer and any rollover pursuant to the waiver of the 60-day rollover period constitute a modification of series of substantially equal periodic payments within the meaning of section 72(t)(4) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

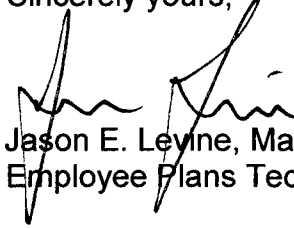
A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

201509065

If you have any questions, please contact

. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Jason E. Levine, Manager
Employee Plans Technical Group 2

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

CC: